

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JESSE HOUGHTAILING,

Plaintiff,

v.

CROWN EQUIPMENT  
CORPORATION,

Defendant.

Case No. 11-cv-05040-TEH

**ORDER RE: PLAINTIFF'S  
WITNESSES AND ABANDONMENT  
OF DESIGN DEFECT CLAIM**


The Court held a pretrial conference in this case on November 18, 2014. During the pretrial conference, Plaintiff Jesse Houghtailing was afforded a final opportunity to disclose the identity of percipient witnesses that he expects to call during trial. Additionally, the parties discussed whether Plaintiff intends to pursue his design defect claim at trial.

Plaintiff was obligated to disclose the identity and expected testimony of potential witnesses 10 calendar days before the pretrial conference. Dec. 3, 2012 Order for Pretrial Preparation § 5(b)(3)(B) (Docket No. 27). Such disclosures are necessary to allow opposing counsel the opportunity to prepare for the expected witnesses' testimony. However, because of the trial date's extended continuance, the Court allowed Plaintiff the opportunity to disclose the identity of percipient witnesses at the pretrial conference. Plaintiff identified four potential witnesses: (1) Joaquin Gutierrez, a forklift driver; (2) David Connell; (3) Steve Robinson; and (4) Paul, whose last name is currently unknown. Accordingly, the Court ORDERS Plaintiff to provide Defendant with the full name, address, and telephone number of these witnesses in accordance with Federal Rule of Civil Procedure 26. Further, pursuant to the Court's November 18, 2014 Order on Defendant's Motions *in Limine* (Docket No. 77), the Court reminds Plaintiff that these witnesses will not be permitted to offer expert testimony in this case because they were not timely disclosed.

1 Finally, Plaintiff stated at the pretrial conference that he will not pursue a strict  
2 liability design defect claim at trial. Because Plaintiff has affirmatively abandoned this  
3 claim, and the parties have agreed not to pursue the matter at trial, the Court hereby  
4 DISMISSES Plaintiff's cause of action for strict liability design defect. This Order does  
5 not affect the viability of the remaining claims in this case.

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8 **IT IS SO ORDERED.**

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10 Dated: 11/18/14

  
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THELTON E. HENDERSON  
United States District Judge